

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Regulated Industries Committee

BILL: CS/SB 2670

INTRODUCER: Regulated Industries Committee and Senator Crist

SUBJECT: Building Assessment and Remediation

DATE: April 25, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	Fav/CS
2.			CJ	
3.			JU	
4.				
5.				
6.				

I. Summary:

Mold. The mold assessor and mold remediator portion of the bill provides:

- Requirements for practice or persons who engage in business as a mold assessor or mold remediator that include:
 - Working under the direct supervision of someone who either has a two-year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or related field along with a minimum one year of documented field experience or high school equivalency with two years of documented field experience.
 - Certification related to performing mold assessment or mold remediation issued by a not-for-profit industry association, society or certification body or college or university that offers training or education.
- Exemptions;
- Prohibited acts and criminal penalties for failing to comply with the act;
- A requirement to maintain a general liability and errors and omissions insurance coverage in an amount of not less than \$250,000;
- A requirement to maintain general liability insurance policy not less than \$500,000 that includes specific coverage for mold related claims;
- A requirement for a contract to perform mold assessment or mold remediation;
- Statute of Limitations;
- Grandfathering provisions.

Home Inspectors.The home inspector portion of the bill provides:

- Requirements for home inspectors;
- Exemptions to the section for certain licensed and regulated professionals;
- Criminal penalties for certain violations of the section; A requirement to maintain commercial general liability insurance in the amount not less than \$300,000;
- The statute of limitations as provided in ch. 95, F.S. governs actions to enforce an obligation, duty, or right arising under the section;
- Home inspectors are not required to provide estimates related to the cost of repair of an inspected property; and
- Grandfathering provisions.

This bill substantially creates the following sections of the Florida Statutes: 468.83, 468.831, 468.832, 468.833, 468.834, 468.835, 468.836, 468.837, 468.838, 468.841, 468.842, 468.843, 468.844, 468.845, 468.846, 468.847, and 468.848.

II. Present Situation:

Mold

2005 Regular Session

During the 2005 Regular Session, SB 590 was introduced to provide for the regulation of mold assessors and mold remediators under a new part IV of ch. 489, F.S. It provided for licensing by the Department of Business and Professional Regulation through the Construction Industry Licensing Board. The bill was substantially amended in the General Government Appropriations Committee to provide for certification of mold assessors and mold remediators, for insurance requirements, and for civil penalties under the Florida Deceptive and Unfair Trade Practices Act.¹ The provisions of this bill were adopted as an amendment to HB 315 on the floor of the Senate.

Governor Bush vetoed House Bill 315 which sought to provide public protection against the possibility of fraudulent practices in the unregulated fields of home inspection, mold assessment, and mold remediation.

The Governor stated his concern that the bill would have unintended consequences, including putting some legitimate and responsible employees out of business. Since the bill grandfathered some home inspectors but did not provide for the grandfathering of responsible and experienced mold assessors and remediators, the Governor stated that this would likely put employees and companies that cannot complete the bill's education and training requirements by January 1, 2006, out of business.

The Governor stated that the bill was somewhat ambiguous and lacked clear guidance to the industry in some areas including, a lack of clear educational and examination requirements. While the bill required training, the Governor stated that there were no specifics regarding the

¹ Sections 501.201 – 501.213, F.S.

kind of curriculum and/or standards necessary for home inspectors, mold assessors, or mold remediators. The Governor further stated that the bill appeared to arbitrarily require high school and college degrees while presenting no clear reasons for the requirements.

The Governor stated that there was some question about whether the mold-specific insurance policy required for mold assessors and a general liability insurance policy with a mold insurance pollution rider required for non-contracting mold remediators, both in an amount not less than \$1 million, would be available by the required date of October 1, 2005. The Governor stated that there was a further concern that this will have the unintended effect of allowing insurers to deny payments for mold claims under a homeowner policy if work on a home has been performed by a mold assessor or mediator.

The Governor stated that he agreed with the bill's sponsors that additional consumer protection was warranted in these fields. He directed the Secretary of the Department of Business and Professional Regulation to work with the various stakeholders during the interim to develop proposed legislation. The department conducted workshops on mold assessment and remediation and a workshop on home inspections.² The workshops culminated in a report issued on February 2, 2006 regarding alternatives to licensure.³

2004 Regular Session

The Senate President approved an interim project to review mold regulation during the 2004 interim. The staff report⁴ indicated that there has been a heightened awareness of the effects of exposure to mold. The report attributed the heightened awareness, in part, to an increase in litigation over mold related issues, the insurance companies responding by limiting coverage for mold damage, and hundreds of businesses (just in South Florida) sprouting up and touting their services as mold remediators.

According to a report issued by the Centers for Disease Control and Prevention (CDC), molds are ubiquitous in nature and grow almost anywhere indoors and outdoors.⁵ The report states that more than 1,000 different kinds of indoor molds have been found in U.S. homes. Mold spores are easily spread because they are small, light-weight and able to survive a long time and under most conditions. Mold growth is stimulated by warm, damp, and humid conditions.

Mold is defined as a typical fungus which consists of a mass of branched, tubular filaments enclosed by a rigid cell wall. The filaments, called hyphae, branch repeatedly into complicated radially-expanding networks called mycelium, which makes up the body of the typical fungus. The mycelium grows by utilizing nutrients from the environment and, upon reaching a certain stage of maturity, forms – either directly or in special fruiting bodies – reproductive cells called spores.⁶

² http://www.myflorida.com/dbpr/os/hot_topics/home_inspec_mold_wkshop.shtml (last visited February 5, 2006).

³ The Department of Business and Professional Regulation issued a report on February 2, 2006, entitled *Alternatives to Licensure Stakeholder Workshops on Home Inspectors and Mold Assessment and Remediation*.

⁴ *Review of Mold Regulation*, Report No. 2004-158, Committee on Regulated Industries, Florida Senate, December 2003.

⁵ *State of the Science on Molds and Human Health, Statement of Stephen C. Redd, M.D.*, Chief, Air Pollution and Respiratory Health Branch National Center for Environmental Health, July 18, 2002.

⁶ *Encyclopedia Britannica* website < <http://www.britannica.com/eb/article?tocId=57951> (last visited February 2, 2006).

Toxic substances produced from the fungus are called “mycotoxins.” They occur in great numbers and variety and the effects can include hallucination, skin inflammation, severe liver damage, hemorrhages, abortion, convulsions, neurological disturbances, and death in livestock and humans.⁷

The CDC is currently working with federal, state, local, and tribal governments to investigate and respond to mold-related problems. It has assisted the U.S. Environmental Protection Agency (EPA) Indoor Environments Division in the development of a guide for mold remediation in schools and large buildings and is developing a brief guide to mold for homeowners.

An individual, company, or employee of the United States, state, city, and county government that engages or offers to engage in the business or profession of performing any mold-related activity for compensation is not regulated in the state. However, engineers and persons engaging in the business of pest control under chs. 471 and 482, F.S., who perform mold-related activities in the scope of their licensure, are regulated.

The regulation of construction contracting is governed by part I of ch. 489, F.S., and is administered by the Construction Industry Licensing Board within the Department of Business and Professional Regulation. Contractors are divided into Division I and II categories. Division I contractors include general, building, and residential contractors. Division II contractors are those contractors typically referred to as “subcontractors” that include professions such as plumbing, mechanical, and air-conditioning contracting.

Licensed engineers practicing engineering is defined, in part, by s. 471.005, F.S., to mean a person engaged in any service or creative work, the adequate performance of which requires engineering education, training and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services, insofar as they involve safeguarding life, health, or property.

The United States Environmental Protection Agency has prepared information to assist individuals in determining when the mold situation may be handled in-house by a person responsible for building maintenance or when an outside contractor should be contacted.⁸

Home Inspectors

Current Florida law does not license or regulate the practice of home inspectors. There are an estimated 3,000 home inspection entities in Florida.⁹ Generally, the home inspector provides an inspection to a buyer just prior to the sale of the home. The home inspector looks for visually obvious problems with the home and reports any problems to the buyer who may consider having them corrected by the seller before closing the sale. A home inspector is not required to

⁷ *Encyclopedia Britannica* website <http://www.britannica.com/eb/article?tocId=9054528> (last visited February 2, 2006).

⁸ *Mold Remediation in Schools and Commercial Buildings*, U. S. Environmental Protection Agency, Office of Air and Radiation, Indoor Environments Division, EPA 402-K-01-001, March 2001, <http://www.cdc.gov/mold/default.htm> (last visited, February 2, 2006).

⁹ The Department of Business and Professional Regulation obtained this information from the Florida Association of Building Inspectors.

report to the customer possible conflicts of interest and is under no obligation to maintain the confidentiality of a home inspection report.

The existence and level of home inspector regulation varies from state to state.¹⁰ For example, Georgia law requires home inspectors to provide written documents to customers containing certain information, including the scope of the inspection, the structural elements and systems to be inspected, that the inspection is a visual inspection, and that the home inspector will notify, in writing, the person on whose behalf such inspection is being made of any defects noted during the inspection.¹¹ In Alabama the rules require individuals performing home inspections to be licensed by the Alabama Building Commission.¹² The Alabama Standards of Practice and Code of Ethics are adopted from the American Society of Home Inspectors (ASHI) Standards of Practice and Code of Ethics.¹³ The Alabama law also outline educational and experience requirements to become licensed, sets license fees and insurance requirements, and defines penalties under which licensure may be suspended or revoked.¹⁴

2005 Regular Session

During the 2005 Regular Session, SB 1830 was introduced to provide for the regulation of home inspectors under a new s. 501.935, F.S. It provided for statements of practice to be established by the Department of Business and Professional Regulation. The bill provided for licensure for professional home inspectors. It provided eligibility criteria that included courses of study and examination requirements. The bill provided for exemptions and a grandfathering provision. It prohibited certain acts and provided for licensing fees. It required a general liability insurance policy in the amount of \$300,000, prohibited home inspectors from providing cost estimates, provided reciprocity, and continuing education requirements. It provided that violations of the provisions of the act constituted a deceptive and unfair trade practice under part II of ch. 501, F.S.¹⁵

The bill was substantially amended in the Senate Regulated Industries Committee to delete provisions providing for an advisory council, licensure requirements, administrative complaints and discipline, fees, continuing education and reciprocity with other states. It provided that home inspectors were not regulated by any state agency, but violations of the section may be actionable as an unfair and deceptive trade practice under part II of ch. 501, F.S. It provided for exemptions for certain licensed professionals, requirements for liability insurance, training, continuing education requirements, and restrictions on the use of the term "home inspector." It provided for criminal penalties for certain violations of the section.

The bill was amended on the floor of the Senate to add the certification of mold assessors and mold remediators. The companion bill, HB 315 was passed that included the certification for both professions.

¹⁰ The National Association of Certified Home Inspectors (NACHI) reports that there are at least 17 states that license home inspectors.

¹¹ Ga. Code Unann. s. 8-3-331 (2001).

¹² Alabama Building Commission, Alabama Home Inspectors Registration Program, *Chapter 170-x-24-.03*.

¹³ *Id.* at *Chapter 170-x-25-02*.

¹⁴ Al. Code s. 34-14B-1 – 9 (1975).

¹⁵ Florida Deceptive and Unfair Trade Practices Act, ss. 501.201-501.213, F.S.

The Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (the act) provides that “unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” The act provides that it should be construed with “due consideration and great weight ... given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1). ”

Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive. A person willfully violating the provisions of the act is liable for a civil penalty of not more than \$10,000 per violation. This penalty increases to \$15,000 for each violation if the willful violation victimizes or attempts to victimize senior citizens or handicapped persons. Individuals aggrieved by a violation of this act may seek to obtain a declaratory judgment that an act or practice violates this act and to enjoin a person from continuing the deceptive or unfair act. An individual harmed by a person who has violated this act may also seek actual damages from that person, plus attorney’s fees and court costs. The state attorneys and the Department of Legal Affairs are the enforcing authorities for the act and the act specifies the actions that the enforcing authority may bring.

Sunrise Analysis

Section 11.62, F.S., sets forth the criteria for the legislative review of proposed regulation of unregulated functions. It provides that the intent of the Legislature is not to regulate a profession unless:

- It is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power be exercised only to the extent necessary for that purpose; and
- Does not unnecessarily restrict entry into the practice of the profession or occupation or adversely affect the availability of the professional or occupational services to the public.

It requires that the Legislature consider five factors in determining whether to regulate a profession or occupation:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;

- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

At this time, no information has been requested or supplied pursuant to s. 11.62, F.S., to the Department of Business and Professional Regulation or to legislative committees by the proponents of legislation regarding state regulation of home inspectors or mold assessors and remediators.

III. Effect of Proposed Changes:

Legislative Intent

The bill creates s. 468.83, F.S. to provide for the legislative intent pursuant to s. 11.62, F.S. that professions and occupations covered by this part be regulated in a manner that does not unnecessarily restrict entry into such professions or occupations. It provides that the Legislature finds that this part provides a measure of protection for homeowners by providing education, experience, and testing requirements for persons in such professions or occupations necessary to protect homeowners' investments in their homes.

Definitions

It defines "mold" as an organism of the class fungi that causes disintegration of organic matter and produces spores, and includes any spores, hyphae, and mycotoxins produced by mold.

It defines "mold assessment" as:

- An investigation or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;
- The development of a mold-management plan or mold remediation protocol; or
- The collection or analysis of a mold sample.

It defines "mold assessor" as any person who performs or directly supervises a mold assessment.

It defines "mold remediation" as the removal, cleaning, sanitizing, demolition, or other treatment, including preventative activities, of mold or mold-contaminated matter that was not purposely grown at that location; however, such removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, may not be work that requires a license under ch. 489, F.S. unless performed by a person who is licensed under that chapter or the work complies with that chapter.

It defines "mold remediator" as any person who performs mold remediation. It provides that a mold remediator may not perform any work that requires a license under ch. 489, F.S., unless the mold remediator is also licensed under that chapter or complies with that chapter.

Requirements for practice

It creates s. 468.832(1), F.S., to provide that a person may not work as a mold assessor or mold remediator unless he or she has evidence of, or works under the direct supervision of a person who has evidence of, the following:

- For a mold remediator, at least a two-year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution, along with a minimum of one year of documented field experience in a field related to mold remediation;
- For a mold assessor, at least a two-year degree in microbiology, engineering, architecture, industrial hygiene, occupational safety, or a related field of science from an accredited institution, along with a minimum of one year of documented field experience in conducting microbial sampling or investigations, or a high school diploma, a GED, or the equivalent with a minimum of two years of documented field experience in conducting microbial sampling or investigations.
- A certification related to performing mold assessment or mold remediation, respectively. The certification may be issued by a not-for-profit industry association, society, or certification body or by a college or university that offers mold assessment or mold remediation training or education, respectively. Qualified certification programs shall be accredited by a nationally recognized independent accrediting entity that sets programs and standards that comply with American Society for Testing and Materials Standard E1929-98, Standard Practice for Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria, or the equivalent.

It creates s. 468.832(2), F.S., to provide that a business entity may not provide or offer to provide mold assessment or mold remediation services unless the business entity satisfies all of the requirements of this part.

Exemptions

The bill creates s. 468.833, F.S., to provide exemptions for the following persons:

- A residential property owner who performs mold assessment on his or her own property;
- A person who performs mold assessment on property owned or leased by the person, the person's employer, or an entity affiliated with the person's employer through common ownership or on property operated or managed by the person's employer or an entity affiliated with the person's employer through common ownership. This does not apply if the person, employer, or affiliated entity engages in the business of performing mold assessment for the public;
- An employee of a mold assessor while directly supervised by the mold assessor;
- Individuals or business organizations that are not specifically engaged in mold assessment but are acting within the scope of the respective licenses required

under ch. 471, part I of ch. 481, ch. 482, or ch. 489, F.S., are acting on behalf of an insurer under part VI of ch. 626, F.S., or are individuals in the manufactured housing industry who are licensed under ch. 320, F.S.;

- An authorized employee of the United States, this state, or any municipality, county, or other political subdivision, or public or private school, who meets the requirements of s. 468.832, F.S. and who is conducting mold assessment within the scope of that employment, as long as the employee does not hold out for hire or otherwise engage in mold assessment.

Prohibited acts; penalties

The bill creates s. 468.834, F.S., to provide that a mold assessor, a company that employs a mold assessor or a company that is controlled by a company that also has a financial interest in a company employing a mold assessor may not:

- Perform or offer to perform any mold assessment without complying with the requirements of this section;
- Perform any mold remediation to a structure on which the mold assessor or the mold assessor's company provided a mold assessment within the last 12 months;
- Inspect for a fee any property in which the assessor or the assessor's company has any financial or transfer interest;
- Accept any compensation, inducement, or reward from a mold remediator or mold remediator's company for the referral of any business to the mold remediator or the mold remediator's company;
- Offer any compensation, inducement, or reward to a mold remediator or mold remediator's company for the referral of any business from the mold remediator or the mold remediator's company;
- Accept an engagement to make an omission of the assessment or conduct an assessment in which the assessment itself, or the fee payable for the assessment, is contingent upon the conclusions of the assessment.

It creates s. 468.834(2), F.S., to provide that a mold remediator, a company that employs a mold remediator, or a company that is controlled by a company that also has a financial interest in a company employing a mold remediator may not:

- Perform or offer to perform any mold remediation without complying with the requirements of this part;
- Perform or offer to perform any mold assessment as defined in s. 468.831, F.S.;
- Remediate for a fee, any property in which the mold remediator or the mold remediator's company has any financial or transfer interest;
- Accept any compensation, inducement, or reward from a mold assessor or mold assessor's company for the referral of any business from the mold assessor or the mold assessor's company;
- Offer any compensation, inducement, or reward to a mold assessor or mold assessor's company.

It creates s. 468.834(3), F.S., to provide that any person who violates any provision of this section commits:

- A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082, F.S. or 775.083, F.S.
- A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.;
- A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Insurance

The bill creates s. 468.835, F.S., to provide that, effective January 1, 2007, a mold assessor must maintain general liability and errors and omissions insurance coverage in an amount of not less than \$250,000.

It provides that effective January 1, 2007, a mold remediator must maintain general liability insurance policy in an amount of not less than \$500,000 that includes specific coverage for mold related claims.

Contracts

The bill creates s. 468.836, F.S., to provide that a contract to perform mold assessment or mold remediation must be in a document or electronic record, signed or otherwise authenticated by the parties. A mold assessment contract is not required to provide estimates related to the cost of repair of an assessed property. It provides that a mold assessment contract is not required to provide estimates.

Statute of Limitations

The bill creates s. 468.867, F.S., to provide that ch. 95, F.S. governs the time at which an action to enforce an obligation, a duty, or a right arising under this part must be commenced.

Grandfather clause

The bill creates s. 468.838, F.S. to provide that the provisions of this part become effective upon becoming law and shall allow for a period of two years after enactment in which persons currently performing mold assessment or mold remediation as described under this part have to complete the requirements of this part.

Home Inspectors

Definitions

The bill creates s. 468.841(1), F.S., to provide the following definitions:

- “Home” means any residential real property, or manufactured or modular home, which is a single-family dwelling, duplex, triplex, quadruplex, condominium unit, or cooperative unit. It does not include the common areas of condominiums or cooperatives;
- “Home inspector” means any person who provides or offers to provide a home inspection for a fee or other compensation;
- “Home inspection” means a limited visual examination of one or more of the readily accessible installed systems and components of a home, including the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.

Requirements of Practice

The bill creates s. 468.842, F.S., to provide the requirements of practice that include:

- Successfully completing a course in home inspections which requires a passing score on a valid examination provided through a nonprofit organization or community college or university, not less than 80 hours which includes but is not limited to:
 - Structure;
 - Electrical system;
 - Roof covering;
 - Plumbing system;
 - Interior components;
 - Exterior components;
 - Site conditions that affect the structure; and
 - Heating, ventilation, and cooling systems.
- Annually completes eight hours of continuing education, provided through a nonprofit organization or a community college or university, related to home inspections;
- Discloses in writing to the consumer prior to contracting for or commencing a home inspection:
 - The home inspector meets the education and examination requirements;
 - The home inspector maintains the commercial general liability insurance policy;
 - The scope and any exclusions of the home inspection;
 - A statement of experience which shall include either the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.

- Business entities may not provide or offer to provide home inspection services unless each of the home inspectors employed by the business entity satisfies all the requirements under this section;
- Business entities may not use, in connection with the name or signature of the business entity, the title “home inspectors” to describe the business entity’s services unless each of the home inspectors employed by the business entity satisfies all the requirements under this section.

The bill does not provide for who will be responsible for approval of the 80-hour course of study and the continuing education courses. The founder of the National Association of Certified Home Inspectors maintains the provisions in this section would limit the type of test to one provider.

Exemptions

The bill creates s. 468.843, F.S., to provide the following exemptions from the section when acting within the scope of practice authorized by the license, except when conducting, producing, disseminating, or charging a fee for a home inspection or otherwise operating within the scope of this section:

- A construction contractor licensed under ch. 489, F.S.;
- An architect licensed under ch. 481, F.S.;
- An engineer licensed under ch. 471, F.S.;
- A building code administrator, plans examiner, or building code inspector licensed under part XII of ch. 468;
- A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of ch. 475, F.S.;
- An inspector whose report is being provided to, and is solely for the benefit of, the Federal Housing Administration or the Veterans Administration;
- An inspector conducting inspections for wood-destroying organisms on behalf of a licensee under ch. 482, F.S.;
- A firesafety inspector certified under s. 633.081, F.S.;
- An insurance adjuster licensed under part VI of ch. 626, F.S., or any person performing insurance duties;
- An officer appointed by the court;
- A master septic tank contractor licensed under part III of ch. 489, F.S.;
- A certified energy auditor performing an energy audit of any home or building conducted under ch. 366, F.S, or rules adopted by the Public Service Commission; or
- A mobile home manufacturer, dealer, or installer regulated or licensed under the requirements of ch. 320, F.S. and any employees or agents of the manufacturer, dealer, or installer.

Prohibited Acts; Penalties

The bill creates s. 468.844, F.S., to provide that a home inspector, a company that employs a home inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector may not:

- Perform or offer to perform, prior to closing, for any additional fee, any repairs to a home on which the inspector or the inspector's company has prepared a home inspection report. This does not apply to a home warranty company that is affiliated with or retains a home inspector to perform repairs pursuant to a claim made under a home warranty contract;
- Inspect for a fee any property in which the inspector or the inspector's company has any financial or transfer interest;
- Offer or deliver any compensation, inducement, or reward to the owner of the inspected property, or any broker or agent therefore, for the referral of any business to the inspector or the inspection company;
- Accept an engagement to make an omission or prepare a report in which the inspection itself, or the fee payable for the inspection, is contingent upon either the conclusions in the report, preestablished findings, or the close of escrow.

Any person who violates provisions of the subsection commits:

- A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.;
- A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.;
- A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

Insurance

The bill creates s. 501.935(5), F.S., to provide that a licensed home inspector must maintain a commercial general liability insurance policy in an amount of not less than \$300,000.

Repair Cost Estimates

The bill creates s. 501.935(6), F.S., to provide that home inspectors are not required to provide estimates related to the cost of repair of an inspected property.

Statute of Limitations

The bill creates s. 501.935(7), F.S., to provide that ch. 95, F.S. governs when an action to enforce an obligation, duty, or right arising under section must be commenced.

Grandfather Clause

The bill creates s. 468.848, F.S., to provide that notwithstanding any other provision of this section, until January 1, 2008, persons who meet the following criteria may work as home inspectors if they have:

- Successfully completed high school or its equivalent or have been in the business of home inspection services for at least five years;
- Been engaged in the practice of home inspection for compensation for at least three years prior to January 1, 2007;
- Performed not fewer than 250 home inspections for compensation.

The bill will take effect July 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article III, s. 6 of the State Constitution requires that a bill must pertain to a single subject that is briefly stated in the bill's title. Courts have interpreted this to mean that all provisions of a bill must be "properly connected" to the subject of the bill in a "natural or logical" way.

The bill contains provisions dealing with the regulation of mold assessors and remediators and home inspectors. The relating to clause does provide that the bill relates to "building assessment and remediation." The single subject clause may be implicated as to whether the regulation of these professions has a "natural and logical" connection.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Persons seeking to meet the statutory requirements for practicing mold assessment, mold remediation and home inspection, and who are not exempted from the requirements, will incur costs for education and insurance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
